

# Business groups back Fred Meyer appeal bid

By [Gordon Oliver](#), Columbian business editor

The Columbian

Published: December 17, 2013, 6:00 AM

The National Federation of Independent Business and the Association of Washington Business have joined other organizations in asking the Washington Supreme Court to overrule an appeals court decision on a wage issue that arose from Portland-based Fred Meyer's use of janitorial contractors in the Puget Sound region.

In the case *Becerra v. Fred Meyer*, the Washington Court of Appeals held in September that Fred Meyer and a janitorial subcontractor were joint employers of a subcontractor's janitorial employees and should be held liable for meeting rules of Washington's Minimum Wage Act. Fred Meyer contracted with Expert Janitorial, which in turn contracted with All Janitorial, to provide janitors.

Some of the janitors filed suit against Fred Meyer, Expert Janitorial and All Janitorial for minimum wage, overtime and rest/meal break violations. Fred Meyer and Expert Janitorial asserted that they could not be held liable because they did not actually employ the janitors, according to an analysis by the Seattle-based Savitt, Bruce, & Willey law firm.

A trial court's decision in favor of Fred Meyer was overruled by the court of appeals, which ruled that Fred Meyer was a joint employer under the federal Fair Labor Standards Act. The court of appeals said the fact that the janitors worked on Fred Meyer's premises using its equipment, and that Fred Meyer directly supervised some of the janitors' work, weighed in favor of joint employment designation. Fred Meyer has appealed that decision.

The business groups supporting the appeal assert that the court "construed the joint-employer theory so broadly that it would make it almost impossible to have a service contract with another company without potentially being viewed as a joint employer," Luke Wake, staff attorney for the National Federation of Independent Business' Small Business Legal Center, said in a news release. Wake argued that the court failed to clearly explain how the test should be applied, creating potential liability for companies entering into service contracts.

Kris Tefft of the Association of Washington Business, which is spearheading the business groups' brief on appeal, said the case, if upheld, "will have a chilling effect on routine and perfectly legitimate contracting and outsourcing business relationships all across Washington in many industries."

Melinda Merrill, spokeswoman for Fred Meyer, said the company's writes language in its contracts intended to insure that contractors treat workers fairly and follow applicable laws. But the court ruling, if upheld, would greatly increase liability for companies that

use service contracts. "It would have such a significant effect on the way a company does business," she said.